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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation and maintenance of corporations, is to deal with members of the bar, exclusively.

Mr. Justice Roberts who delivered the opinion of the Supreme Court in the New York Milk Price Fixing Case (see page 152 herein) quoted therein Chief Justice Taney (License Cases 5 How. 504, 583) as follows:

> "But what are the police powers of a State? They are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions. And whether a State passes a quarantine law, or a law to punish offences, or to establish courts of justice, or requiring certain instruments to be recorded, or to regulate commerce within its own limits, in every case it exercises the same powers; that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominion. It is by virtue of this power that it legislates; and its authority to make regulations of commerce is as absolute as its power to pass health laws, except in so far as it has been restricted by the constitution of the United States."

Justice Roberts, who quoted from the opinions in other Supreme Court cases, then says: "Thus has this court from the early days affirmed that the power to promote the general welfare is inherent in government. Touching the matters committed to it by the Constitution the United States possesses the power as do the states in their sovereign capacity touching all subjects jurisdiction of which is not surrendered to the Federal government, as shown by the quotations above given."

Kenneth Sutherland

President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for April

Recovery of Property

J. E. Thompson

It is, of course, well settled that an unqualified foreign corporation cannot resort to the state courts in the enforcement of contracts relating to intrastate business; nevertheless, generally, the corporation, while denied this right, can recover and repossess the property involved. The general rule has been stated by the Supreme Court of Michigan as follows:

"The authorities are uniform in holding that replevin is a personal action *ex delicto* brought to recover goods unlawfully taken or detained. Unless the statute says so, the non-compliance by a foreign corporation with the terms and conditions upon which the domestic law allows it to enter the state and do business will not preclude it, or any one claiming through it, from maintaining an action which is purely *ex delicto*." (*Rex Beach Pictures Co. v. Garson Productions*, 177 N. W. 254.)

This right of recovery may, however, provide scant consolation for the unqualified foreign corporation in certain cases. The property involved may not be sufficient in value to justify the time and expense and the taking of the steps necessary to recover it. But on the other hand the right may be of the utmost importance, as when a large amount of the corporation's property is centralized in the hands of an agent. But in any event litigation would be necessary, a process requiring expenditures which might nullify any good derived from the repossession.

A corporation is engaged in the business of marketing its product; it does not wish to find itself engaged in recovering property which to all intents and purposes has been sold. Therefore, this right of recovering should receive no consideration in determining the necessity for the corporation's qualification in a particular state. If the corporation is engaged in intrastate business it must be in position to enforce its contracts, and get the money due thereunder, —and qualification, not the right to recover property, is the only safe insurance to that end.

The above should not be confused with the discussion in the January, 1934 Corporation Journal on repossession and resale. There the discussion applied to property originally sold in interstate commerce and it was pointed out that in such cases the repossession and *resale* continued as part of such commerce. Here, the discussion relates to property originally sold in intrastate commerce and while the corporation can repossess itself of the property, it would be in exactly the same position it was before recovery should it resell.

Domestic Corporations

Delaware.

May corporation's funds be used to cover expense of procuring proxies to be voted for themselves by incumbent directors in election contest and to cover expenses of court proceedings to review the election? In this case the Delaware Court of Chancery (New Castle County) answers in the affirmative each of the questions propounded in the above caption. On the matter of the first question it is said: "Where the controversy is concerned with a question of policy as distinguished from personnel of management and the stockholders are called upon to decide it, it would seem quite clear that the incumbent directors may with perfect propriety make such expenditures from the corporate treasury as are reasonably necessary to inform the stockholders of the considerations which the directors deem sufficient to support the wisdom of the policy advocated by them and under attack; and in the same communications which the directors address to the stockholders in support of their policy they may solicit proxies in its favor." English and American cases of direct or indirect bearing are discussed. "I gather the principle from these authorities to be that where reasonable expenditures are in the interest of an intelligent exercise of judgment on the part of the stockholders upon policies to be pursued, the expenditures are proper; but when the expenditures are solely in the personal interest of the directors to maintain themselves in office, expenditures made in their campaign for proxies are not proper." On the second question the court considers it reasonable to say that in a collateral proceeding such as this (injunction sought to prohibit the corporation from expending any of its funds in connection with the proceedings instituted for a review of the election) the declared result of the election as duly made at the close of the meeting has a presumption of validity in its favor. And then: "If so, the question is whether the corporation has the right to use corporate funds to maintain the results of action which the stockholders took in their duly constituted statutory assembly. I am of the opinion that it has such right." *Hall v. Trans-Lux Daylight Picture Screen Corporation et al.*, decided February 15, 1934. Aaron Finger, of the firm of Richards, Layton and Finger, of Wilmington, for complainant. Hugh M. Morris and John Biggs, Jr., both of Wilmington, for defendant.

Louisiana.

Note given for stock on understanding that dividends on stock would pay note remains as stockholder's obligation on liquidation of corporation. Here, stock of a Louisiana corporation was subscribed for by and issued to the defendant, payment being made by a promissory note on the understanding by all parties that dividends on the stock would extinguish the note. There was no

misrepresentation and no suggestion of fraud. During several succeeding prosperous years substantial dividends were regularly paid, proportionately reducing the amount due on the note. Then came the depression; liquidation of the corporation eventuated. In the process of liquidation the defendant has received liquidating dividends which further reduce the amount of the note. Does he owe the still unpaid amount thereof? On rehearing, reversing its former decision (147 So. 556), and now affirming the judgment below, the Court of Appeal of Louisiana, Second Circuit, says that he does. "We see no legal or equitable reason why defendant should not share the same treatment, receiving the same benefits and accepting the same responsibilities, in proportion to his stock ownership in, and his liability to, the company, as other stockholders and debtors to it will receive and have to accept." *Dealers' Finance Co., Inc. v. Woodard,* 151 So. 145. J. Rush Wimberly, of Arcadia, for appellant. Stewart & Stewart, of Minden, for appellee.

Judgment against domestic corporation null and void because of illegality of service of summons. Action against Frank Melat, Consolidated, a Louisiana corporation, domiciled in Caddo Parish. One of the named agents for service of process on behalf of the corporation, as provided by statute, is Frank Melat. Citation was addressed to "Frank Melat, Consolidated, of the Parish of Caddo." Return by Deputy Sheriff shows that citation was served on "the within named Frank Melat" at his residence, by handing the same to an adult resident at the same address, Frank Melat being absent from home. Judgment by default; seizure of property; advertisement of sale; appearance seeking restraining order; granted; such dissolved; on appeal the Louisiana Court of Appeal, Second Circuit, declares the original judgment null and void. The court asks—"Was defendant legally cited in the original suit?" And answers that even if return did read that service had been made on "within Frank Melat, Consolidated" (instead of as above), still it would not have been a legal citation since "There is no provision in our law for substituted service by making domiciliary service upon an officer of a corporation or upon a duly appointed agent for service." The court says that a reading of the statutes (paragraphs II and III, Section 37, Act No. 250, 1928), and a reading of the return "are sufficient to show the illegality of the citation, without further discussion." *Frank Melat, Consolidated, et al. v. Cooper, et al.,* 150 So. 432. Fraser & Carroll, of Many, for appellants. Pickett & Moore, of Many, for appellees.

Massachusetts.

On right of stockholder to examine all of books, records, etc., of his corporation. A single justice of the Supreme Judicial Court of Massachusetts, County of Middlesex, solely because of his ruling of law on a contract (which ruling is now held to have been in error)

ordered a writ of mandamus to issue directing defendant corporation to permit the plaintiff preferred stockholder, a corporation, to examine its records, books of account, files of correspondence or other writings, designs, plans, drawings, and models. The full court sustains exceptions saved; thus, there is a denial of the writ. The court says that "the granting of the writ would permit the plaintiff to examine all the secret researches and results of skilled and technical investigations. The plaintiff has no special rights in these properties. That would have a tendency to diminish the value of properties of this nature to other prospective customers of the defendant and would be to the disadvantage of other stockholders and of the corporation as a whole. Whatever rights the plaintiff may have to examine books and property of the defendant if properly restricted so as not to work its detriment, the present petition and claim is too broad and seeks too much." *Electro-Formation, Inc. v. Ergon Research Laboratories, Inc.*, 187 N. E. 827. S. R. Wrightington, of Boston, for plaintiff. G. K. Richardson and W. E. Bennett, both of Boston, for defendant.

New Jersey.

Service of process set aside in action against a corporation. Founded in an action in tort against a manufacturing corporation (whether domestic or foreign to New Jersey is not disclosed). Service of summons on behalf of the corporation was made on a salesman employee of a wholesaler handling the manufacturer's goods such salesman being engaged in selling the manufacturer's product to the retail trade. "He rendered minor incidental services for, but was not in the employ or pay of the prosecutor" i. e., the manufacturer, who instituted certiorari proceedings in the Supreme Court of New Jersey against a District Court Judge, to review an order denying its application to set aside the service. The court directs that the service be set aside, saying, "Whether prosecutor is a domestic or a foreign corporation, the service upon the salesman was not service upon it. The statutes do not authorize such a service, and the cases are adverse." "We infer that it was upon the theory of ostensible agency that the conclusion below was reached * * * but that theory has no present application because the suit itself does not turn upon the salesman's agency." *Seeman Bros., Inc. v. Goldberger, Judge*, 170 A. 226. Milton M. Unger, of Newark, for prosecutor. Leo S. Lowenkopf, of Perth Amboy, for defendant.

New York.

The fixing of minimum prices for milk under state authority. In the digest of this cause in the New York Court of Appeals (262 N. Y. 259, 186 N. E. 694), in The Corporation Journal for November, 1933, at page 29, wherein the upholding of the law (Chap. 158, N. Y. Laws of 1933—the fixing of minimum prices for milk is one of the main features of the act) was noted, we recited that in the

prevailing opinion it is stated that "the policy of noninterference with individual freedom must at times give way to the policy of compulsion for the general welfare" and that in a dissenting opinion it is said that "the police power, although 'a dynamic agency, vague and undefined in its scope' cannot rise superior to the Constitution." The United States Supreme Court affirms (March 5, 1934) in a five to four decision. Mr. Justice Roberts, who delivered the opinion of the court, says that "So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. * * * Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty." In the opinion in dissent it is said: "If now liberty or property may be struck down because of difficult circumstances, we must expect that hereafter every right must yield to the voice of an impatient majority when stirred by distressful exigency. * * * The Legislature cannot lawfully destroy guaranteed rights of one man with the prime purpose of enriching another, even if for the moment, this may seem advantageous to the public. And the adoption of 'any concept of jurisprudence' which permits facile disregard of the Constitution as long interpreted and respected will inevitably lead to its destruction. Then, all rights will be subject to the caprice of the hour; government by stable laws will pass." *Leo Nebbia v. New York*, United States Supreme Court, No. 531.—October Term, 1933.

Pennsylvania.

"Parent" company's attempt to establish claim, on bankruptcy of subsidiary. The United States District Court, W. D. Pennsylvania, dismisses exceptions to referee's ruling denying claim (referred to in the foregoing caption). Court says bankrupt "was not an actual corporation, but was merely masquerading as such to enable the claimant to carry on a part of its business under a corporate fiction." When the bankruptcy court took over assets the bankrupt's stock certificate book showed as issued stock one share each to three directors and 177 shares to the "parent." Claim was made that stock was not issued as matter of fact; or, even if it had been issued would have been void as under Pennsylvania law stock may not be issued in excess of the amount actually paid for. The court says: "To us it seems as though it matters little, in the instant matter, whether the claimant is the owner of the stock or not. It is impaled upon one horn of a dilemma, or the other. If regarded as the purchaser, it is liable for the unpaid par value, less the amount of the advancements; and if as not the purchaser, it was guilty of defrauding those who really are its own creditors by holding up to them a mere shell of a corporation—one which was supported by not one dollar of capital

actually paid in. By such a device as was here used, debts cannot be shunted off." *In re Mill Run Lumber Co.*, 4 F. Supp. 807. Curtis L. Webb, of Meadville, for trustee. Frank B. Quinn (of English, Quinn, Leemhuis & Tayntor), of Erie, for bankrupt and Stow Lumber & Coal Co. Dickson Andrews, of Meadville, for objectors.

Virginia.

Certain voting trust trustees should not become directors of the corporation whose stock is in the voting trust. This case involves the validity of an election of directors of a Virginia corporation. There had been a merger of several corporations and a voting trust had been created. The opinion, with the many facts set forth, is rather voluminous; we cover but one feature of the decision of the Supreme Court of Appeals of Virginia which reverses the order below dismissing the petition to have the election vacated and annulled. The court says: "Mr. Plummer and Mr. Syme were trustees (of the voting trust), and, as we have seen, were officers of their respective banks. Manifestly there is bitterness of feeling among the stockholders, and the control of this $5,000,000 corporation was a matter of exceeding importance. Their banks were depositories and were anxious to retain its accounts. This, petitioner charges, was impolitic and unwise. It was their duty to serve impartially every interest, and in this instance it is possible that the interest of their banks might not coincide with the interest of the company. They should not have voted to nominate themselves, and should have declined to serve if elected. Their nomination and election should be set aside, and since this is true, there should be a new election of all directors. In this new body the names of no one of these trustees should appear. Those elected should be, and no doubt will be, disinterested stockholders who have no interest in banks or in other enterprises which may conflict with the interests of the trunk company", i. e., of the corporation involved. *Seward v. American Hardware Co., Inc., et al.*, 171 S. E. 650. Charles Hall Davis and William Old, both of Petersburg, for appellant. J. Gordon Bohannan, of Petersburg, for appellee.

Washington.

Wrong defendant. Rem. Rev. Stat. Sec. 8338 before the Supreme Court of Washington in this criminal procedure provides that any distributor of liquid fuel violating any of the provisions of the liquid fuel tax act (making of sworn returns, payment of tax, etc.) shall be guilty of a gross misdemeanor. Criminal prosecution against the manager and principal officer of a Washington corporation, a distributor of liquid fuel, for failure to make return and to pay the excise tax due on fuel oil sold by his company during a certain period. The court affirms the judgment of dismissal below, saying: "Obviously, the statute imposes certain duties upon distributors of liquid fuel, not upon their officers or employees. With reference to

the required monthly statement, the gist of the offense is not the failure of an officer of a corporation to swear to such statement, but the failure of the distributor to render a statement properly sworn to. With reference to the payment of the tax, the offense is not the failure of the officer to pay it, but the failure of the distributor to pay it. The duties and obligations created by the statute are upon the distributor, and the offense arising from the failure to comply with the statute is likewise the offense of the distributor." *State v. Lyon,* 27 P. (2d) 131. Chas. W. Greenough and Carl P. Lang, both of Spokane, for the State. Orville W. Duell and Gleeson & Gleeson, all of Seattle, for respondent.

Wisconsin.

Crimes committed by corporations and the punishment. The Supreme Court of Wisconsin says: "Although it is now well established that a corporation can be held guilty of crime when it is punishable by a fine (cases cited), it has been repeatedly held that, when the only punishment prescribed for an offense is imprisonment, which cannot in the nature of things be inflicted upon it, no information or indictment will lie against it, because the law does not permit or require that which is futile (cases and authorities cited, and two nisi prius cases contra, noted)." *Kropf v. Gilbert, Sheriff* (and two other cases), 251 N. W. 478. Appearances Curkeet, Lewis & Sanborn, of Madison; McGovern, Curtis & Devos, of Milwaukee (H. H. Thomas, of Madison, of counsel); Fred Risser, Dist. Atty. of Madison, and A. W. Kopp, Sp. Prosecutor of Platteville.

Foreign Corporations

Illinois.

Retaliatory laws and comity between states. A California Insurance Company, authorized to do business in Illinois, asserted that the construction of the Illinois Insurance Retaliatory Tax Act (Smith-Hurd Rev. St. 1933, c. 73, Secs. 67, 68) as applied to the collection of the annual license tax, is unconstitutional, because under the Illinois law all of the tax must be paid at one time, and because under that law no discount is allowed on account of making the single payment, whereas the California law provides for payment in two installments, with a discount on account of the second half of the tax if the first payment covers the entire amount of the annual tax. The Supreme Court of Illinois, affirming the decree below dismissing the company's bill for want of equity, says: "The law is, that in permitting foreign corporations to do business in this state, the state may impose such conditions, restrictions, and regulations as it shall see fit, so long as they do not violate the Federal Constitution. The statute of this state here under consideration is plainly a retaliatory statute, and as such must be strictly construed. We are not permitted to read into it words and meanings not found in the

For Administration of NRA Codes

Administration
efficiency for the
is bringing about
re-organization
has been picked
Company for

the N. R. A. Codes for the various industries—with the industry and safety for the individuals in charge of it—the organization of many new trade associations or the old ones on sounder lines. For most of them, Delaware the state of incorporation and The Corporation Trust corporate representative. The following are good examples:

AMERICAN WHOLESALE CANVAS GOODS MANUFACTURERS ASSOCIATION
FULL FASHIONED HOSIERY ASSOCIATION, INC.
INTERNATIONAL ASSOCIATION OF ICE CREAM MANUFACTURERS
MOTOR FIRE APPARATUS MANUFACTURERS ASSOCIATION
NATIONAL FISHERIES ASSOCIATION
NORTHEASTERN LUMBER MANUFACTURERS' ASSOCIATION
WHOLESALE FRUIT & VEGETABLE JOBBERS ASSOCIATION, INC.
NATIONAL SHOE REBUILDERS ASSOCIATION OF AMERICA
ASSOCIATED SERUM PRODUCERS, INC.
WIRE ROPE AND STRAND MANUFACTURERS ASSOCIATION
RETAIL LUMBER AND BUILDING MATERIAL CODE AUTHORITY, INC.
NATIONAL RAYON YARN PROCESSORS ASSOCIATES, INC.
NATIONAL PAINT, VARNISH AND LACQUER ASSOCIATION, INC.
LUMBER CODE AUTHORITY, INCORPORATED
AMERICAN AUTO LAUNDRY ASSOCIATION
THE GREAT LAKES VESSEL FUEL DOCK OPERATORS ASSOCIATION, INC.
HARDWOOD MANUFACTURERS' INSTITUTE, INC.
END GRAIN STRIP WOOD BLOCK MANUFACTURERS, INC.
PACKAGING MACHINERY MANUFACTURERS INSTITUTE, INCORPORATED
THE HAND CHAIN HOIST INSTITUTE, INC.
THE CHAIN INSTITUTE, INC.
THE ASSOCIATED COOPERAGE INDUSTRIES OF AMERICA, INC.
THE PAPERBOARD INSTITUTE, INC.

Attorneys for any industries that have not yet organized for code administration will gladly be furnished with copies of the certificate of incorporation of any of the above, upon request to any office of The Corporation Trust Company.

body of the act itself. * * * To put the construction contended for by the complainant upon this statute would be to permit the California statute to amend or supersede the time fixed for the payment by the Illinois act. Comity between the states is to be encouraged, reciprocity is to be promoted, but to read into this act a provision by which the payment of the tax could be made in two installments would violate well-defined rules of construction for statutes of this character and extend the doctrine of comity and reciprocity beyond all reasonable limits." *Pacific Mut. Life Ins. Co. of Calif. v. Lowe, Director of Trade and Commerce et al.*, 188 N. E. 436. Ekern & Meyers, of Chicago (William E. Mooney and Luther F. Binkley, both of Chicago, of counsel), for appellant. Otto Kerner, Atty. Gen. (B. L. Catron, of Springfield, of counsel), for appellees.

New York.

Service of process on "resident vice president" of foreign corporation on its behalf held valid. Service of process on behalf of a foreign corporation doing business in New York was served on one who, by corporate by-laws, was designated as "Resident Vice President" of the company. By New York law service of summons on a foreign corporation may be effected by delivery of a copy thereof to the company's vice-president (among other officers named). The United States Circuit Court of Appeals, Second Circuit, holds the service good (on the merits summary judgment was vacated, and cause remanded for trial). The court says (on the matter of the summons): "We entertain no doubt that the service was good. If a foreign corporation chooses to designate a local agent by the title of vice-president, then under the terms of the statute he is subject to service of process. It is true that one may be a vice president though he does not have the title, and that such a one may also be served. But from this it must not be inferred that, if a titular vice president does not possess all the conventional duties of one, he is not within the section. The purpose of the statute in designating the persons to be served is to specify agents whose positions are such as to raise a just presumption that notice to them will be adequate notice to the corporation. If the defendant sees fit to classify an agent high enough in its hierarchy of officials to be given the title of vice president, that purpose is fulfilled." *Consolidated Indemnity & Insurance Co. v. Alliance Casualty Co.*, 68 F. (2d) 21. Richards & Affeld, of New York City (Frank Sowers, of New York City, of counsel), for appellant. A. Bertram Samuels, of New York City (John E. Leddy and Morris G. Duchin, both of New York City, of counsel), for appellee.

On the question of service of process on a foreign corporation both before and after the surrender of its authority to do business in the state. Service of process here was held valid by the United States District Court, Southern District of New York; beyond that, on the

merits, we do not go. The court says "Jurisdiction over the person of a foreign corporation depends alternately on two factors: one is whether it is doing business in the state; the other is whether it has consented to the jurisdiction. * * * Under the New York statute relative to qualification of a foreign corporation to do business in the state, the appointment of the Secretary of State by the corporation as its agent on whom 'all process in any action or proceeding against it may be served' is a general one and is not limited to causes of action springing from transactions within the state. But after the corporation has surrendered its authority and has filed the appropriate papers to that end, the authority of the Secretary of State thereafter to represent the corporation, under the law as recently amended (General Corporation Law, Section 216 already quoted), is cut down to the service of process 'in an action or proceeding upon any liability or obligation incurred within this state before the filing of the certificate of surrender of authority'. The agency of the state officer to take service after the cessation of business is an instance of express consent to the jurisdiction, and the validity of a state statute requiring the continuance of the agency in so far as concerns suits arising out of business done in the state is beyond question." *Waltham Watch Co. v. Federal Broadcasting Co. et al.*, decided February 15, 1934, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 109051.

Oklahoma.

Appointment of receiver for a Delaware corporation by an Oklahoma court. Pending final trial of cause brought by the purchaser of a large number of shares of a Delaware corporation but most of whose business, apparently, was carried on in Oklahoma, against the corporation, alleging false and fraudulent representations, etc., etc., plaintiff sought receivership. On the allegations made and evidence offered a receiver was appointed. On appeal motion to vacate the appointment was denied. On appeal to the Oklahoma Supreme Court it was urged that the trial court had no jurisdiction to appoint a receiver for a foreign corporation upon petition of a stockholder to wind up the business and distribute the assets, that no cause of action for receivership was stated, and that there is no evidence to justify the appointment of a receiver. The court says that under the circumstances as disclosed by the record here there is no question of the jurisdiction of the district court to appoint a receiver. "The trial court is clothed with judicial discretion in the appointment of a receiver. He should further consider, and himself review, the matter on a motion to vacate his former order appointing a receiver. This the trial court did and denied the motion to vacate. On appeal the burden is on the defendant to show the error in the action of the trial court. The defendant presents his attack upon three grounds, but they are not sustained. In this case the trial court had jurisdiction to appoint a receiver, the allegations and proof were sufficient to justify and sustain the appointment of a receiver, and the action

of the trial court in denying the defendant's motion to vacate the appointment of receiver is affirmed." *Anglo-American Royalties Corporation v. Brentnall,* decided February 6, 1934, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 108855.

South Carolina.

Foreign corporation may be sued in county other than that within which service of process was made. To the merits here we do not go. At the time the cause of action arose the defendant was conducting a business in Allendale county; service of the summons and complaint was made on an agent of the defendant in that county. Action was brought in Calhoun county. First appearing specially, defendant objected to the jurisdiction of the Calhoun county court, asserting that it had no representative or agent in that county on whom process could be served. The Supreme Court of South Carolina sustains the jurisdiction (and affirms the judgment), saying, relying on Section 826, Code of 1932: "The defendant being a foreign corporation and sued as such, not domesticated in this state, the plaintiff had the right to institute the action in any county of the state, and, having obtained service on the defendant's agent in Allendale county, jurisdiction was acquired by the court of Calhoun county." *McIntyre v. United Five Cent and Ten Cent Stores, Inc.,* 172 S. E. 220. Gazan, Walsh & Bernstein, of Savannah, Ga., and W. R. Symmes, of St. Matthews, for appellant. L. Marion Gressette and D. S. Murph, both of St. Matthews, for respondent.

Texas.

If a license to do business in Texas by foreign corporation is not essential to open Texas courts to it, alleging a license and proof thereof is not necessary. An Oklahoma corporation alleging that it had a permit to do business in Texas, and was doing an interstate business, brought suit on a promissory note. Judgment below for the plaintiff. Question on appeal before the Court of Civil Appeals of Texas (Eastland) is whether or not it was necessary for plaintiff to prove its allegation that it had "a permit to do business in the State of Texas." Says the court: "If it was necessary to make such proof, then the allegation was necessary. If the allegation was unnecessary it may be treated as surplusage." Was the allegation necessary? The petition, as has been noted, alleged the doing of an interstate business. "If plaintiff was only doing an interstate business, no permit was necessary." Plaintiff did not allege that it was doing business in Texas. "The act of procuring a permit would, at most, show an intention at the time to do so in the future. We think we are bound to know that such an intention could be abandoned before any business in the state was ever transacted. Hence it seems to us the fact of the actual transaction of business cannot be implied merely from a once manifested intention to do so." So—

"if a foreign corporation, denominating itself as such, brings a suit in this state, and in the statement of its cause of action alleges no fact to show, either expressly or impliedly, that such cause of action arose out of the transaction of business in the state (other than interstate business), it is not necessary to allege a permit to do business in the state. * * * an allegation of a permit should be treated as surplusage. * * * We conclude that it was unnecessary for plaintiff to prove that it had a permit." Judgment affirmed. *Gholson et al. v. Wickwire Spencer Sales Corporation*, 66 S. W. (2d) 814. L. R. Pearson, of Ranger, for appellants. Cox & Hayden, of Abiline, for appellee.

TAXATION

Florida.

Local license ordinance held invalid. The validity of a local occupational license ordinance imposing tax on persons selling, offering to sell, soliciting orders for, or delivering by truck, goods, wares, and merchandise, is in question. It is provided that the tax shall not be required if the goods, etc., are to be shipped into the city in foreign or interstate commerce. Reversing the court below the Supreme Court of Florida, Division B, declares the ordinance to be unconstitutional. Calling attention to the fact that the tax is imposed if the shipment of goods is made from any point within Florida, but is not laid if such shipment is from any point without the state, the court says: "The ordinance may be invalid for a number of reasons, but it is so clearly invalid because of its attempted discrimination that it is not necessary to mention other defects. * * * When the question presented and considered is that of unjust discrimination only, it can make no difference whether the discrimination is exercised in favor of a resident of the state against a resident of some other state or country, or is exercised against a resident of the state and in favor of the residents of other states and countries. The unjust discrimination in either case constitutes a violation of organic law." *Duffin v. Tucker, Chief of Police, City of Cocoa*, 150 S. 904. Hampton & Jordan, of Gainesville, for plaintiff in error. Fleming & Snow, of Cocoa, for defendant in error.

Louisiana.

License tax on office building business held valid but in instant case found to be computed on a false base. License tax on persons operating office buildings and deriving income therefrom based on gross rentals therefrom. The Supreme Court of Louisiana sustains the license, and, after amending, affirms the judgment below. The business is one subject to license. The term "office building" is not too vague; it is the province of the courts to decide doubtful cases. A license tax based on gross rentals, or income, is not an income tax. A license tax of this nature is not a direct tax on office buildings; it is a privilege tax on the business to which the property is devoted.

The fact that one who operates an office building without deriving any revenue from the business pays no tax (no minimum is provided for) does not imply arbitrary exemption or discrimination; those deriving income are not in the same class as are those who derive no income. Rentals *"therefrom"* means from that part only of the building devoted to the business on which the license is imposed, i. e., on office building rentals; so, and hence the amendment of the judgment below, the base of tax, in the case of a building devoted to "office building" purposes and to other purposes, is on the rentals derived from the "office building" activities only. *State v. Heymann*, 151 So. 901. Milling, Godchaux, Saal & Milling, of New Orleans (Nicholas Callan, of New Orleans, of counsel), for appellant. Charles J. Rivet, of New Orleans, for the State.

Oklahoma.

Exempt dividends under Oklahoma income tax law. Chapter 66, Article 7, Session Laws of 1931, imposing an income tax on individuals and corporations provides for exemption from inclusion in gross income for purposes of the tax "dividends received from stock in any corporation, the income of which is taxable under the provisions of this Act." The question decided here is, are dividends received by an individual from a corporation whose income is concededly taxable under the Act to be subjected to tax in the event that the earnings from which the dividends were paid were received by the paying corporation before January 1, 1931, and so at a time when the income of the corporation was not "taxable under the provisions of this Act"? The Oklahoma Tax Commission insisted that in such case the exemption did not exist and that the dividends were taxable in the hands of the stockholder. The Supreme Court of Oklahoma, reversing the judgment below, decides to the contrary, holding that when a statute is plain and unambiguous as it is here it must be construed and enforced by the courts as written, and so that dividends received from a corporation whose income is subject to tax under the Act are exempt regardless of the time of the earning of the funds from which such dividends are paid. *Rapp v. Oklahoma Tax Commission*, 27 P. (2d) 157. Dwight Williams and F. C. Dooley, both of Oklahoma City, for plaintiff in error. C. W. King, of Oklahoma City, for defendant in error Oklahoma Tax Commission. W. C. Hall, of Oklahoma City, for other defendants in error. Robert A. Hefner and Robert A. Hefner, Jr., both of Oklahoma City, amici curiae.

South Carolina.

Local license tax on truck of foreign corporation making deliveries of articles sold in interstate commerce held illegal as burdening such commerce. Plaintiff is a corporation foreign to South Carolina, having offices and warehouses in North Carolina. An agent solicits orders in Camden, S. C., sending all orders to North Carolina, where

each is individually wrapped and addressed, and then all are placed in large containers and shipped by rail to Sumter, S. C., consigned to plaintiff. The South Carolina agent receives the shipment, removes the separately wrapped packages of ordered merchandise from the large containers and makes delivery to the addressees in Camden by means of a delivery car belonging to plaintiff. Collection is made at time of delivery, the entire amount thereof being forwarded to the plaintiff corporation. The agent is paid a salary. The city of Camden by ordinance imposes a $50 license fee on all trucks hauling merchandise in or out of the city. Such fee was demanded of plaintiff and paid under protest. This suit to recover followed. The Supreme Court of South Carolina affirms the judgment below for plaintiff. It was urged that the interstate character of the commerce ceased with the arrival in Sumter of the large containers; and that the tax is against the vehicle and not against the commerce. The court holds that the interstate flow of the commerce is not complete until the delivery of the separately addressed packages; and "thinks it clear that the taxing of any agency or instrumentality used in interstate commerce, no matter where it may operate, constitutes a tax on the commerce." *Jewel Tea Co., Inc. v. City of Camden*, 172 S. E. 307. L. A. Wittkowsky, of Camden, for appellant. M. M. Johnson, of Camden, for respondent.

Virginia.

Occupancy of sidewalks to exclusion of public by contractor constructing Federal building subjects contractor to contractor's license tax. Virginia imposes a license fee or tax on one who (in most general terms) contracts to do any work in the nature of construction in or on any building, or paving or curbing, or excavating, etc., such tax being for the privilege of transacting business in the state. An Illinois corporation, with executive offices in Indiana, and licensed to do business in Virginia, contracted with the United States to construct a Federal building on land in Lynchburg, Va., to which the United States had title. The tax was asserted against the contractor. The work was sublet to underlying contractors to whom by permit the exclusive use of the sidewalks adjoining the Federal site was granted, pedestrians being denied access thereto. The levy of the tax was contested on the ground that no business was being conducted within the state, i. e., on property over which the state has jurisdiction. But the adjoining sidewalks over which the state has jurisdiction are being used to the exclusion of the public. The Supreme Court of Appeals of Virginia, affirming the judgment below sustains the license. "Were it possible for the company to carry out its contract without appropriating to its use the streets of the city, in the manner pointed out, the levy of the tax would be void. The mere use of the highways in common with citizens of the state cannot constitute a basis for the imposition of the license. The basis of the tax, however, is found in the distinction between general use

and sole appropriation of the highway." *Ralph Sollitt & Sons Const. Co. v. Commonwealth,* 172 S. E. 290. Barksdale & Abbot and J. Wallace Ould, all of Lynchburg, for plaintiff in error. W. W. Martin and Henry R. Miller, Jr., both of Richmond, for the Commonwealth.

CORPORATE MEETINGS HELD

During the past few weeks meetings of the corporations named below, among many others, have been held at some one of the offices of The Corporation Trust Company.

Interlake Iron Corporation
Curtiss-Caproni Corporation
American Stove Company
Electric Power Associates, Inc.
Twin Coach Company
Monquin, Inc.
Oklahoma Natural Gas Company
Continental Baking Corporation
Standard Investing Corporation
Marancha Corporation
Ward Baking Corporation
Ethyl Gasoline Corporation
H. M. Byllesby and Company
United Carbon Company
American District Telegraph Company
Twin City Rapid Transit Company

Some Important Matters for April and May

This calendar does not purpose to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters, requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return and Return of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

COLORADO—Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due after April 1 and before July 1. —Domestic Corporations.

DOMINION OF CANADA—Annual Summary due between April 1 and June 1.—Domestic Companies.

Income Tax Return due on or before April 30.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

KANSAS—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax Return due on or before June 1.—Domestic Corporations.

MASSACHUSETTS—Excise Tax Return due on or before April 10.—Domestic and Foreign Corporations.

MISSOURI—Annual Franchise Tax due on or before May 15 and delinquent after June 1.—Domestic and Foreign Corporations.

Income Tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

NEW MEXICO—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

NEW YORK—Return of Information at the source due on or before April 15.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

NORTH CAROLINA—Annual Report (Capital Stock and Franchise Tax Report) due on or before May 1.—Domestic Corporations.

RHODE ISLAND—Semi-Annual Report to Chief Factory Inspector due in April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

SOUTH DAKOTA—Quarterly Gross Income Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

TENNESSEE—Annual Excise Tax Report due on or before May 1.—Domestic and Foreign Corporations.

TEXAS—Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

VERMONT—List of Stockholders due on or before April 5.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

VIRGINIA—Income Tax Return and Return of Information at the source due on or before April 15.—Domestic and Foreign Corporations.

WEST VIRGINIA—Annual License Tax Report due in April.—Foreign Corporations.

Quarterly Gross Income Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

The High Cost of Whistles for Corporations—Benjamin Franklin's classic, "The Whistle," here is shown, by the decisions in actual court cases, to have a very pointed application to some of the policies of some business corporations of our own day. A sixteen-page pamphlet for both laymen and lawyers.

Securities Act of 1933—Complete text of this important new law which constitutes in effect a National Blue Sky Law.

Special Report—The Case Against Corporate Representation by Business Employes. Specific experiences of different corporations with the handling by untrained corporate representatives of such matters as service of process, notices of taxes due, filing of corporation reports, etc.

Amendments to Delaware Corporation Law, 1933. Presents the complete text of the 1933 amendments to Chapter 65 of the Revised Code, all new matters being shown in italics, and repealed matter in brackets, so a complete picture is conveyed of the changes effected, while explanatory comments show the purpose and result of each change.

What Constitutes Doing Business. (Revised to March 1, 1933.) A 314-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic.

Amateur Corporate Representation. A booklet dealing with some of the weaknesses of placing a company's statutory representation in the hands of business employes or others not trained in the matters involved.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1933.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.